



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0192]

Hours of Service of Drivers: Kentucky Equipment Distributors (KED); Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from Kentucky Equipment Distributors (KED) requesting an exemption from the requirement that drivers of commercial motor vehicles (CMVs) qualifying for the “short-haul – 100 air-mile radius driver” exception must return to the original work reporting location within 12 hours of coming on duty. KED asks that its short-haul CMV drivers be permitted to return within 14 hours instead of 12 without losing their short-haul status. FMCSA requests public comment on KED’s application for exemption.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2019-0192 by any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. See the [Public Participation and Request for Comments](#) section below for further information.
- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366-4325; E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2019-0192), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means.

FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, “FMCSA-2019-0192” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any

safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Drivers qualifying for the hours-of-service (HOS) short-haul exception in 49 CFR 395.1(e)(1) do not have to maintain a record of duty status (RODS) on board the vehicle. However, such drivers must return to their normal work reporting location and be released from work within 12 hours after coming on duty. A driver who exceeds the 12-hour limit loses the short-haul exception and must immediately prepare RODS for the entire day, often by means of an electronic logging device (ELD)(49 CFR 395.8(a)(1)(i)). KED is requesting that its short-haul CMV drivers be permitted to return within 14 hours instead of 12 without losing their short-haul status.

Kentucky Equipment Distributors (KED) is comprised of several large machinery distributors operating in several states whose fleet focuses on agriculture, construction, mining, as well as road paving. KED includes seven companies and approximately 3,500 employees. The requested exemption would apply to short-haul drivers engaged in the transportation and repair of equipment and machinery. KED drivers generally meet the requirements of the short-haul

operations exception, though they may occasionally take more than 12 hours to return and be released from their work reporting location. The requested increase to 14 hours will ensure KED drivers meet the requirements of the short-haul operations exception.

KED companies currently own and operate 431 vehicles that fall under the HOS regulations in 49 CFR part 395. Most of the vehicles are field service and parts delivery trucks. Duties associated with these vehicles enable the company to bring their shop/tools to the piece of equipment needing servicing versus having to transport the equipment back to the shop. KED's drivers perform duties such as but not limited to: onsite repairs, hauling parts and components, as well as routine maintenance. The vehicles are primarily utilized for haulage of equipment and tooling as relates to their primary use versus utilization for long-haul trucking.

Operators and owners within KED operate a series of large delivery vehicles and are not classified as long-haul drivers. All KED drivers perform a great deal of work outside of the vehicle, unlike drivers whose extended time behind the wheel makes them susceptible to fatigue. KED requests that these vehicles, which are like ready-mixed concrete and oilfield operational trucks, be designated for the exemption. KED drivers, like that of the ready-mixed concrete industry, spend most their shift hours performing non-driving job duties, which lessens driver fatigue. KED estimates that only 20% of its drivers' daily duties involves driving, typically to and from the worksite.

According to KED, the application is consistent with the current 14-hour limit for drivers of ready-mixed concrete vehicles. KED also pointed out that FMCSA had granted similar short-haul exemptions to Waste Management (WM) and the National Asphalt Pavement Association (NAPA). According to KED, WM drivers spend 30-50% of their time in "collection mode" and NAPA drivers drive 20% of the time. KED estimates that its drivers travel between 50-80 miles during each shift; driving time is therefore less than 20% of the individual's total duties.

KED's application for exemption is available for review in the docket for this notice.

IV. Method to Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent level of safety, KED offers supplementary driver management training which includes identifying and managing sleep deprivation, reducing eye strain, as well as driver fatigue prevention. According to KED, this training helps drivers to understand as well as identify triggers associated with fatigue, and provides help to minimize fatigue. KED notes that Waste Management and asphalt paving workers have similar daily schedules, where driving is only a small part of their workload.

A copy of KED's application for exemption is available for review in the docket for this notice.

Issued on: October 11, 2019.

Larry W. Minor,

Associate Administrator of Policy.

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